

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of K.H.S., Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TOM HENRY SHELTON, JR.,

Respondent-Appellant,

and

ARLINDA SHELTON,

Respondent.

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UNPUBLISHED

April 29, 2003

No. 239258

Ionia Circuit Court

Family Division

LC No. 01-000249-NA

Before: Whitbeck, C.J., and Cavanagh and Bandstra, JJ.

MEMORANDUM.

Respondent appeals as of right the trial court's order establishing jurisdiction over the minor child pursuant to MCL 712A.2(b). We affirm.

Respondent first<sup>1</sup> argues that the trial court abused its discretion and denied him due process when it sustained, on the ground that the question had been "asked and answered," an objection to respondent's counsel's questioning of respondent about his relationship with Shannon Baker. This Court reviews a trial court's evidentiary decisions for an abuse of discretion. See, generally, *In re Vasquez*, 199 Mich App 44, 50-51; 501 NW2d 231 (1993). Here, the trial court's ruling sustaining the objection was not an abuse of discretion because respondent had already testified at length regarding the nature of his relationship with Baker.

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<sup>1</sup> Although respondent presents a total of thirteen issues in his statement of questions presented, he has addressed the merits of only two of those issues in his brief on appeal. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Accordingly, we decline to address the remainder of the issues raised by respondent.

Moreover, the record shows that despite the trial court's ruling respondent was later permitted to add to his previous testimony regarding the nature of his relationship with Baker, and was also afforded the opportunity to cross-examine Baker and other witnesses concerning that relationship. Consequently, we similarly find no merit in respondent's claim that he was denied his due process right to defend himself against what he asserts to have been "the fraudulent testimony of Shannon Baker."<sup>2</sup>

Respondent also argues that his counsel was ineffective because he failed to object to the prosecutor's statement during opening argument that the jury would hear testimony regarding allegations that respondent had sexually abused Baker's son, and himself referred to the allegations during his own opening statement. Respondent asserts that counsel should have objected to the prosecutor's comments based on FRE 403. FRE 403, which is identical to MRE 403, permits the exclusion of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." Initially, we note that the prosecutor's comments regarding the alleged sexual abuse were proper remarks on the evidence to be presented in support of establishing jurisdiction over the minor child. See *People v Johnson*, 187 Mich App 621, 626; 468 NW2d 307 (1991). Although these allegations were not themselves advanced as a basis for assuming jurisdiction, they nonetheless served as a basis for establishing that respondent had neglected the welfare of the minor child. They showed that respondent willfully disregarded petitioner's repeated instructions to avoid contact with Baker, who was alleged to be engaged in a sexual relationship with respondent's minor child. Thus, given the probative value of such evidence to a determination whether jurisdiction over the minor child should be assumed by the court, any objection based on MRE 403 or its federal counterpart would have been futile. Accordingly, respondent has failed to establish that his trial counsel was ineffective for failing to object to the challenged comments. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000) (trial counsel is not effective for failing to advocate a meritless or futile position). For these same reasons, we find no error in counsel for respondent having addressed these allegations during his own opening statement. Indeed, counsel's comments concerning the alleged sexual abuse were merely a response to the prosecutor's proper comments on that subject, and served to inform the jury that evidence indicating that respondent had been cleared of any wrongdoing in connection with the allegations would also be presented at trial.

We affirm.

/s/ William C. Whitbeck  
/s/ Mark J. Cavanagh  
/s/ Richard A. Bandstra

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<sup>2</sup> In support of this assertion, respondent has attached four affidavits to his appellate brief. However, these affidavits are not part of the lower court record and we therefore decline to consider their content on appeal. See *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 579-580; 609 NW2d 593 (2000) (noting that this Court's review is limited to the record developed by the trial court, and that a party is not permitted to enlarge the record on appeal by asserting facts not presented in the trial court).